

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:19-CV-00094-KG-KK

\$49,000.00 in United States Currency,

\$34,000.00 in United States Currency,

Defendants-in-rem,

And

JOSE RUIZ,
ETHAN SANDOVAL,

Claimants.

ORDER DISMISSING CLAIMANTS' CLAIMS WITH PREJUDICE

This matter is before the Court on the United States' motion to dismiss Claimants' claims with prejudice filed and served on January 24, 2020. (Doc.34). Claimants did not file a response to the motion. The Court, having read the motion and being fully advised in the premises, finds that the motion is well taken and will be granted.

On December 16, 2019, United States Magistrate Judge Kirtan Khalsa found that Claimants had intentionally and without valid reasons refused to participate in the proceedings and prosecute their claims and ordered Claimants to respond to the Government's special interrogatories within fourteen (14) days of receipt. (Docs. 28 and 31).

On December 16, 2019, the United States emailed copies of the special interrogatories to counsel for Claimants. On January 2, 2020, counsel for the United States again emailed to

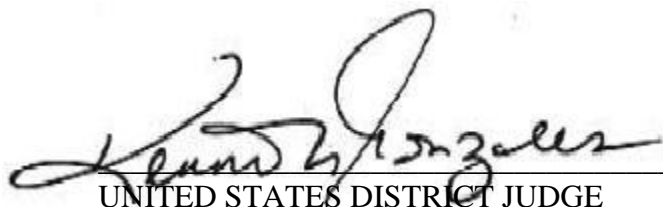
counsel for Claimants and confirmed that counsel for claimants received the interrogatories. (Doc. 31, pp. 2-3). Claimants failed to respond to the special interrogatories.

Fed.R.Civ.P. 41(b) provides that “If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” A dismissal under Rule 41(b) operates as an adjudication on the merits. This rule applies to any counterclaim, crossclaim, or third-party claim. Fed.R.Civ.P. 41(c). Claimants’ refusal to comply with court order and failure to participate in the proceedings and prosecute their claims warrants dismissal of their claims with prejudice. Further, Claimants’ failure to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion. *See* D.N.M.LR-Civ.7.1(b).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

The verified claim of Claimant Jose Ruiz filed on April 4, 2019, (Doc. 4) is hereby dismissed with prejudice pursuant to Fed.R.Civ.P. 41(b) and (c).

The verified claim of Claimant Ethan Sandoval filed on April 5, 2019, (Doc. 5) is hereby dismissed with prejudice pursuant to Fed.R.Civ.P. 41(b) and (c).



UNITED STATES DISTRICT JUDGE

SUBMITTED BY:

Submitted via email on 2-19-2020
STEPHEN R. KOTZ
Assistant U.S. Attorney